

Chapter 4: Communication with Bargaining Unit Employees



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Routine Work Communications

You are entitled to communicate with the bargaining unit employees without union representation when you are involved in the routine accomplishment of their work and the work of the unit you supervise. Routine work communications generally involves the assignment of work, your delivery of performance appraisal(s), discussions or suggestions for work improvement and any counseling or correction you provide in the routine accomplishment of the work of the unit.

- **Assignment of Work** generally involves the discussions between you and the employees you supervise in accomplishing the work of the unit you supervise. This includes assignments from you to them, questions they may have regarding those assignments, other work related questions, and any other discussions you may have throughout the workday on work accomplishment. However, be sure your discussions do not involve any changes to the working conditions of the employees. Topics of that nature deserve special treatment and are discussed later in this chapter.
- **Performance appraisal discussions** are also outside the statutory requirements for representation with limited exceptions. The exceptions involve contractual language that may have been negotiated in either a master agreement at your agency headquarters level or a local agreement. In some agreements negotiated by a limited number of agencies, the requirement is established to provide representation for the bargaining unit employees during performance appraisal discussions. Although this representation is not required by the Statute, it is a negotiable topic that has been incorporated in some agreements. Be sure you review the requirements of your applicable negotiated agreement(s) to obtain guidance on the proper procedures to follow in your agency.
- **Counseling and corrections** accomplished as part of the daily routine assignment of work also are considered to be routine work communications. The routine accomplishment of counseling and correction sometimes becomes a topic of the employee's desire for representation if the employee feels the meeting may result in disciplinary actions and requests representation by the union. If this occurs, see the section below on investigative discussions and follow the choices that are provided for supervisory action when an employee requests representation.

In summary, you are free to communicate with the bargaining unit employees regarding the routine assignment of work and communications regarding that accomplishment without representation rights accruing to either the employees or the union.

Formal Discussions

The Statute defines a *formal discussion* as a meeting between one or more management representatives and one or more bargaining unit employees for the purpose of discussing personnel policies, personnel practices, working conditions, or an **active grievance or appeal**. When a formal meeting is scheduled, it is your obligation, as the representative for management, to invite the Union to send a representative to the meeting. This is a Union right under the Statute as the elected representative for the entire bargaining unit.

In accomplishing your responsibility for inviting the Union, you must provide an invitation to the Union which includes the date and place of the meeting and the subject to be covered. The information regarding the subject should be in sufficient detail to provide the Union with adequate information for making an informed decision about attendance. Before scheduling a formal meeting, you should review your negotiated agreement to determine if there are negotiated procedures for notifying the Union and contact your labor relations advisor to determine if there is a *past practice* that must be followed. Although the Statute does not require a written invitation to the union, you should provide a written invitation to maintain proof that you have invited the Union. This invitation should normally be sent several days before the meeting to provide the Union with adequate time to schedule a representative to attend your meeting if they choose to do so.

Once you have invited the Union to attend the meeting, you have satisfied the statutory obligation regarding formal meetings. The burden is now on the Union to determine if a representative will attend the meeting. When the time and date for your meeting arrives, you are free to conduct the meeting regardless of whether a Union representative attends. If a Union representative attends, the representative is free to make relative comments about the subject being discussed and ask relevant questions. The questions and comments should be tied to the subject being discussed. The meeting is primarily between you and the bargaining unit employee(s). The Union representative is there to assure the negotiated agreement is followed and the general welfare of the bargaining unit is not violated.

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The relationship between the Union and management determines the formality with which communications should be made.

Most *Unfair Labor Practice* charges about formal discussions arise innocently on the part of management. These often occur if a routine staff meeting becomes a formal discussion when a topic changes from accomplishment of routine work to discussion of personnel practices, policies, or terms and conditions of employment. For this reason, many supervisors who conduct staff meetings on a routine basis provide an invitation to the Union to attend all staff meetings. If you choose to provide a standing invitation to the Union, you are then free to discuss any and all topics that arise during your staff meetings. A standing invitation to the Union should be in writing, provide the day and location of the meeting and explain that this is a routine staff meeting but topics concerning formal discussions may arise during the meeting. A suggested text for this invitation would be:

You are invited to send a representative to attend our monthly staff meeting. The meeting will be held on the second Tuesday of each month at 10:00 am in building 123, room 234. While the normal topics for discussion at these meetings will be the routine assignment of work, we may occasionally discuss personnel policies, practices, or terms and conditions of employment for the work unit.

If there are any changes to the above schedule, we will notify you in advance.

If you choose to provide the Union with a standing invitation, be sure to notify the Union or the designated representative, if you are provided with the identity of one designated person who will attend your meetings, of any changes in dates, locations, or agendas, if this information is provided to the bargaining unit employees. The Union is entitled to receive any written communication you provide to the employees you supervise on the staff meeting to which they have been invited. By the same token, if you communicate verbally with the bargaining unit about the staff meeting, you should provide the same communication to the Union representative and maintain documentation that the communication was provided. In case a ULP charge is filed, written documentation of notices to the Union or a designated Union representative is always better proof that you have satisfied your statutory responsibilities than verbal notification which has no proof.

The relationship between the Union and management determines the formality with which communications should be made. In some situations, hand delivering the above described notices is preferable and having the other party sign for receipt is encouraged. In less formal situations, sending an email or verbal communication or invitation is acceptable. The style needed for your particular situation can be confirmed either with your supervisor or your local labor relations advisor.

The following can be used as an easy checklist for determining if a meeting is formal.

1. Will the meeting involve one or more representatives of management?
2. Will the meeting involve one or more bargaining unit members?
3. Will the topic of discussion involve a personnel policy, personnel practice, terms and conditions of employment, or an active grievance or appeal?

If the answer to all three questions is yes, this is a formal meeting and the Union must be invited. Your responsibilities are as follow.

1. Provide a written invitation to the Union that identifies the time, date, place and subject matter of the meeting, sufficiently in advance of the meeting.
2. Conduct the meeting as scheduled regardless of whether a representative attends.
3. If a Union representative attends, permit the representative to ask questions and provide relevant comments concerning the subject matter of the meeting.

Investigative Discussions

When Congress penned the Statute, there was a great deal of discussion about incorporating the rights granted to the private sector in a case entitled ***NLRB v. Weingarten, Inc.***, which is commonly referenced as Weingarten Rights. While the Statute does not make specific reference to Weingarten, the discussions reflected in the Congressional Record provide ample proof that Weingarten was considered by Congress when writing Section 7114 (a)(2)(B), which contains the provisions about investigative discussions. This is the reason the terms *Investigative Discussion* and *Weingarten Rights* are used interchangeably by many agencies. Supervisors sometimes become confused on these differing names for the same process.

There have been many decisions of the FLRA and Courts concerning this subject. Essentially they all boil down to a process that is set forth in the following checklist for investigative discussions.

1. Will the discussion involve a bargaining unit employee?
2. Will the discussion involve a representative of management?

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